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SUPREME COURT, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term 2008

Dr. Marie A. Faltas

versus

Sharon B. Koon

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF SOUTH CAROLINA

SUPPLEMENT TO PETITION FOR A WRIT OF *CERTIORARI* SUGGESTING GRANT, *VACATUR*, AND REMAND, IN LIGHT OF *CAPERTON V. MASSEY*.

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QUESTIONS PRESENTED
Supplemented and Amended in Light of This Court's *Caperton v. Massey* Decision

This Court last visited residential tenants' rights in *Lindsey v. Normet*, 405 U.S. 56 (1972), at which time about 30% of American families lived in apartments or other rented dwellings. Since then, the Uniform Residential Landlord and Tenants ACT, 7B U.L.A. 427, *et seq.* ("URLTA") was formulated and eventually adopted by twenty-one states.

Alaska gives month-to-month tenants all rights of leaseholders except one; in Arizona tenant has Fourth Amendment rights in his rented home; Hawaii and Florida reject summary judgment in contested landlord-tenant cases; Montana rejects a "homestead exemption" for landlord; New Mexico voided a lease 17% above fair-market value; and Oregon held tenant-favoring statute constitutional.

But South Carolina accepted landlord's 30-day notice to vacate, even for the *sole* stated reason of tenant's rejection of a hike that would have brought the rent to 40% above fair market, as justifying eviction by summary judgment.

This conflict among the states, and between this Court and South Carolina's Supreme, urges these questions:

1. Do the life-disrupting eviction of a residential tenant by state coercion and tenant's Fourth Amendment right to peace in her home require clear and convincing proof in contested cases thus precluding summary judgment?

or alternatively stated:

1. May state, by statute, mandate only fair market rent be paid in case of dispute yet allow summary eviction if tenant refuses to pay 40% above fair market value?

2. After this Court held that Due Process does *not* require party to *prove* actual bias where judge's impartiality is reasonably questioned, must South Carolina's Supreme Court's opinion, based on a now-invalid proof-of-actual-bias requirement, be vacated and the case remanded for further proceedings consistent with *Caperton*?

Supplement to Petition for a Writ of *Certiorari*
Suggesting Grant, *Vacatur*, and Remand
In Light of *Caperton v. Massey*

This Court is prayed to grant a writ of *certiorari* to vacate South Carolina's Supreme Court's judgment and remand the case to that court for further proceedings consistent with this Court's opinion in *Caperton v. Massey*, No. 08-22, ___ U.S. ___ . *Caperton* was decided on 8 June 2009, after Petitioner's petition had been prepared and submitted.

Supplemental *Reasons* to Grant, Vacate, and Remand.

"Does the Fourth Amendment protect tenant's home from state coercive eviction by sheriff/constable's force of arms and require 'clear and convincing proof' (thus precluding summary judgment) in contested eviction cases?" is a very important question capable of being answered correctly if remanded to unbiased state judge. If answered incorrectly again, a new petition may be submitted to this Court.

Petitioner had asked that her case be held in abeyance pending *Caperton*. Pet. at 18. This Court has now unequivocally invalidated all proof-of-actual-bias requirements:

> The difficulties of inquiring into actual bias, and the fact that the inquiry is often a private one, simply underscore the need for objective rules. Otherwise, there may be no adequate protection against a judge who simply misreads or misapprehends the motives at work in deciding the case. The judge's own inquiry into actual bias, then, is not one that the law can easily superintend or review, though actual bias, if disclosed, no doubt would be grounds for appropriate relief. In lieu of exclusive reliance on that personal inquiry, on appellate review of the judge's determination respecting actual bias, the Due Process clause has been implemented by objective standards that do not require proof of actual bias. [citations] In defining these standards, the Court has asked whether, "under a realistic appraisal of psychological tendencies and human weakness," the interest "poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Withrow*, 421 U.S. at 47.

That vindicates Petitioner's stance below that Judge Barber's bias against her is "**subconscious and irremediable.**" Ap. at 5.

It also implies that bias may often be a sin of omission.

A subconsciously-biased judge offends, *not merely* by incorrectly (or correctly) reciting facts and law he considered, but (more crucially) by failing to *sua sponte* ask questions that press themselves on a fair judge or by ignoring facts. His ruling may be defensible on *its* report of *its* facts and law; but his injustice is revealed only if the record is reviewed for what it was prevented from containing, not for what is was allowed to contain.

Like Justice Benjamin in *Caperton*, Judge Barber sat here in an appeal, which left crucial testimony untaken and subconscious-bias-derived assumptions undispelled by evidence.

Respondent's true motive to evict Petitioner must have been *assumed* by the judge's biased mind to be wholly attributable to fault by Petitioner. To affirm him without evidence, S.C.'s Supreme *sua sponte* imputed to Tenants "intentions to take advantage of Landlord's generosity by refusing to leave the premises on the specified date and establishing their own terms of rental." Ap. at 4.

But Respondent was the one with hidden "intentions" disproving state courts' conceit that she could never have limited her "fee simple" interest in the rental house. Subsequent independent court proceedings proved Respondent *had* surrendered her "fee simple" by mortgaging the rental house to a bank for $100,000 but wanted to still keep the house by fraudulently claiming it as her primary residence after she evicts Tenants from it. She brutally set Tenants out on 30 September 2008 and defaulted on her mortgage on 1 October 2008—*the very next day*. It was pre-planned by Respondent.

These subsequently-revealed facts highlight, not only what an unbiased judge might have elicited, but also the importance of the good-faith *sine-qua-non* condition in URLTA.

SC's Supreme held itself without jurisdiction to rule on said newly-revealed facts after *Caperton*. Sup. Ap. overleaf.

Conclusion

This Court should order a remand in light of *Caperton*.

20 August 2009 Respectfully submitted

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The Supreme Court of South Carolina

Sharon B. Koon, Respondent,

v.

Soraya Farid Fares and Dr. Marie A. Faltas, Appellants.

ORDER

By way of an opinion dated August 18, 2008, this Court affirmed the findings of the lower courts that respondent gave proper notice to appellants of the termination of their tenancy. Koon v. Fares, 379 S.C. 150, 666 S.E.2d 230 (2008). The Court also held the circuit court judge did not err in refusing to recuse himself in this matter. Id.

Thereafter, appellants filed a petition for rehearing which was denied on September 18, 2008. The remittitur was sent to the lower court on the same date. Appellants filed a petition for a writ of certiorari in the United States Supreme Court on February 18, 2009.

Appellant Faltas has now filed a pro se document entitled "Dr. Faltas' *Urgent* Motion For The Court To Vacate Its Opinion In Compliance With The U.S. Supreme Court's *Caperton v. Massey* And Because Material Facts Were Concealed From the Court." She also asks the Court to waive the filing fee for the motion on the basis that she and her family are undergoing "serious circumstances and paying more fees would impose undue hardships on her."

We find the motions are not properly before this Court.

When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter. Mickle v. Blackmon, 255 S.C. 136, 177 S.E.2d 548 (1970); Thomas v. Lynch, 87 S.C. 44, 68 S.E. 817 (1910); Carpenter v. Lewis, 65 S.C. 400, 43 S.E. 881 (1903); State v. Keels, 39 S.C. 553, 17 S.E. 802 (1893). The only exception to this rule is when the remittitur is sent down by mistake, error or inadvertence of the appellate court. Keels, supra.

The remittitur in this case was not sent down by mistake, error or inadvertence, but was properly sent following the denial of appellants' petition for rehearing. Rule 221(b), SCACR. Accordingly, this Court does not have jurisdiction to act on appellant Faltas' current motions. We therefore dismiss the motions.

IT IS SO ORDERED.

S/ Jean H. Toal, C.J.
John H. Waller, Jr., J.
Costa M. Pleicones, J.
Donald W. Beatty, J.
John W. Kittredge, J.

Columbia, South Carolina
July 22, 2009